IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15060 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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DILIP WAGHESHWARI - Petitioner
Versus
UNION OF INDIA AND OTHERS - Respondents

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Appearance :
MR MS RAO for the Petitioner.
MR SI NANAVATI, SENIOR ADVOCATE with
MR D. G. SHUKLA FOR M/S NANAVATI & NANAVATI Advocates
for the Respondents.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 21/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The petitioner has challenged in this petition the impugned judgment and order dated 02-11-2004 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short ***"Tribunal"***) in Original Application No. 502 of 2004, whereby the learned Tribunal dismissed the Original Application filed by the petitioner – original applicant, challenging his impugned order of transfer dated 23-09-2004.

2. On 24-11-2004, while admitting this petition by issuing Rule on it, the Division Bench of this Court stayed the impugned order of transfer and ordered *status quo ante* on three grounds: (i) *mala fide*; (ii) competency of the authority to transfer the petitioner; and (iii) conditional bail order passed by the Criminal Court, whereby the petitioner was not permitted to leave the area under the jurisdiction of the Court during the pendency of the Criminal Case.

3. After 17 years of service at Ahmedabad, the

petitioner was transferred by order dated 23-09-2004 to Bhubaneshwar. Prior to it, he was placed under suspension on the charge of demanding and accepting bribe. On earlier occasion, he challenged his suspension order before the learned Tribunal by filing Original Application No. 8 of 2003 through his another lawyer Shri Trivedi. There, Shri M. S. Rao was the learned Counsel for the respondents. It appears from the portion of the order passed by the learned Tribunal in Original Application No. 8 of 2003, which is reproduced in paragraph 5 of the present impugned order, that a submission was made by the learned Counsel for the petitioner that if the Authority revokes his order of suspension, then the applicant would go to anywhere in India. On this statement, the Authority considered his case and revoked the order of suspension and transferred him to Bhubaneshwar which was challenged by the petitioner, this time, through Shri Rao, before the learned Tribunal. The challenge failed as the learned Tribunal by its impugned judgment and order dated 02-11-2004 dismissed the application.

4. Shri Rao for the petitioner raised the

following submissions:

(i) That the Authority which had passed the order had no authority to pass the impugned order of transfer, transferring him from Doordarshan to AIR.

(ii) Transfer Order suffers from the vice of *mala fide*.

(iii) As per the conditional order passed by the competent Criminal Court, he cannot leave the State of Gujarat.

(iv) Even at present, there is a need of the petitioner at Ahmedabad as he is a Programme Executive.

5. The above contentions, which have been raised before the learned Tribunal, did not find favour with the learned Tribunal and, therefore, the learned Tribunal dismissed the Original Application filed by the petitioner.

6. Having carefully gone through the impugned judgment and order passed by the learned Tribunal and the reasons assigned by the learned Tribunal in it, we are of the considered opinion that no interference is called for by this Court in this petition. Though this petition is labelled under both Articles 226 and 227 of the Constitution, strictly speaking it is petition under Article 227, the scope of which is very narrow and limited, as held by the Hon'ble Supreme Court in umpteen number of its decisions.

7. The learned Tribunal rejected the first contention of the petitioner regarding competency of the Authority which had passed the order. We fully agree with the reasons assigned by the learned Tribunal for rejecting the said contention. Therefore, we do not see any reason to elaborate the same in this order.

The second contention regarding *mala fide* has no substance. Respondent No. 4 had simply passed the impugned order on the approval of the Director. Having made the said statement before the learned Tribunal that he is ready and willing to go anywhere

in India on the revocation of suspension order, it would not lie in the mouth of the petitioner to once again go before the learned Tribunal, making a grievance that with a *mala fide* intention, he was transferred out of Gujarat. Hence, this second submission of *mala fide* was also rightly rejected by the learned Tribunal.

Even otherwise, the appointment letter makes it very clear that he can be transferred anywhere in India and that too either in AIR or Doordarshan.

The third contention is regarding conditional bail. He can very well go to the competent Criminal Court and request for modification of such condition, but on this ground, he cannot claim to remain in Gujarat. This is very well known fact to one and all that in ACB cases, lot of time is consumed. In fact, the case against the petitioner was filed in 1990. We are in 2007 and still, there is no progress in the Criminal Case. One does not know how long it would continue. On such ground, the order of transfer cannot be interfered.

One more contention raised before this Court was regarding that his services were very much required at Ahmedabad. It is up to the Department to decide whether his service can be utilised at Ahmedabad or anywhere in the country.

In view of the above discussion, this petition fails and is hereby dismissed. Rule discharged. No costs. Interim relief granted earlier stands vacated.

8. At this stage, Shri Rao requests to continue the interim relief for a period of three weeks so as to enable him to approach the higher forum. On facts of this case, request is rejected.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath